

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

William Shaw,)	
as Trustee of Land Trust #8181)	
-vs-)	
Illinois Power Company)	
)	03-0675
Complaint as to Illinois Power Company's)	
refusal to provide utility extensions until)	
it receives a cash deposit violates)	
Section 410.410(c)(1) and 500.310(c)(1))	
of Title 83 of the Illinois Administrative Code)	
in Edwardsville, Illinois)	

REPLY BRIEF
OF WILLIAM SHAW, AS TRUSTEE OF LAND TRUST #8181

Comes now, William Shaw, as Trustee of Land Trust #8181, by and through his attorneys Coffey Law Firm, Professional Corporation in the above-captioned proceeding and for his Reply Brief states:

Summary

Illinois Power Company fails to reconcile its procedure of requiring an advanced deposit with the clear language of the Illinois Administrative Code ("Code"). Instead, Illinois Power Company attempts to justify its non-compliant procedures on arguments of "reasonableness" while avoiding facts and testimony clearly showing Illinois Power Company's violation of the Code.

Illinois Power Company Ignores Relevant Facts.

Illinois Power Company ignores the testimony of its own employee Mr. Zuege and instead argues that it is the Complainant that wrongly interprets the Code. Illinois Power Company ignores Mr. Zuege's own testimony that all the Code requires is an agreement to make a deposit. (*Trial Transcript pg. 178, lines 17-19*). Illinois Power

Company ignores Mr. Zuege's testimony that an irrevocable letter of credit meets the requirements of an agreement to make a deposit. (*Trial Transcript pg. 178, lines 4-13*). Illinois Power Company ignores Mr. Zuege's testimony that there is no authority in Illinois Power Company's rules and regulations specifically authorizing the denial of an irrevocable letter of credit. (*Trial Transcript pg. 184, lines 15-19*). Illinois Power Company fails to reconcile Mr. Zuege's testimony with Illinois Power Company's own procedures that require an advance deposit. Despite clear testimony from its own employee, Illinois Power Company ignores these facts and fails to reconcile its own employee's testimony with its procedures of requiring an advance deposit. Instead, Illinois Power Company unsuccessfully seeks refuge in its tariffs.

Illinois Power Company's Tariffs Do Not Support
An Advance Deposit Requirement.

Illinois Power Company's retreat to its own tariffs fails to support its requirement for an advance deposit. Illinois Power Company's own Rules Regulations and Conditions applying to Electric Service state: "Before construction of underground facilities, an Applicant or Customer shall pay or agree to pay utility any contribution or charge required..." (*IP Exhibit 2.1, pg. 2, 2nd paragraph*). Illinois Power Company argues the "agree to pay" language actually means a written agreement as to the engineering cost estimate, which written agreement then requires the deposit be paid prior to construction of the utilities. (*see pg 12 and 13 of IP's Opening Brief*). The problem with Illinois Power Company's argument and its requirement that the developer pay the deposit prior to construction is that it is contrary to a clear and simple reading of its Rules Regulations and Conditions relating to Electric Service. Accordingly, Illinois

Power Company's retreat to its own tariff does not support or authorize Illinois Power Company's requirement for an advance deposit.

Illinois Power Company Does Not Trump Administrative Code.

Illinois Power Company tries to draw attention away from the actual wording of the Code and relevant issues raised by Complainant, and instead argues that its advance deposit requirement is fair and reasonable, and that an irrevocable letter of credit is "undesirable" (*pg 7 of IP Opening Brief*). Complainant, however, is not asking Illinois Power Company whether its advance deposit requirement is fair or reasonable. Rather, Complainant is asking the Illinois Commerce Commission whether Illinois Power Company's advance deposit requirement is authorized by or contradictory to the Code. Illinois Power Company's brief, by avoiding a direct analysis of the Code and instead seeking "reasonable" rationale for its actions, seems to concede its lack of legitimate authority in the Code for the advance deposit requirement. In its quest to re-position itself and supplant the Code with its own "reasonable" determinations, Illinois Power Company has gone so far as to even state "the applicability of the Administrative Code in such case is questionable." (*pg. 5 of IP's Opening Brief*).

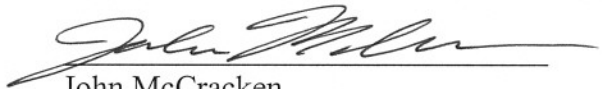
Illinois Power Company Accepts "Undesirable" Letters of Credit.

Illinois Power Company further complicates its defense in this case by claiming letters of credit are "undesirable" and "unusual" (*pg. 7 of IP's Opening Brief*), while admitting at trial to accepting such letters of credit for new electric service customers. Although offering no additional evidence to bolster its claims, Illinois Power Company argues that irrevocable letter of credit are undesirable for keeping expenses to a minimum, assuring payment from the customer, and keeping delays to a minimum.

(see pg 7-8 of IP's Opening Brief). However, Illinois Power Company's own employee Mr. Zuege, testified that Illinois Power Company accepts letters of credit for deposits for new electric service and acknowledges a system set-up at Illinois Power Company to accommodate letters of credit for such service customers (*Trial Transcript pg. 185-186*). Despite Illinois Power Company arguing letters of credit are undesirable at assuring payments, Illinois Power Company's employee Mr. Zuege acknowledged that letters of credit are used by Illinois Power Company as a security that the applicant will make the payment as they have "agreed". (*Trial Transcript pg. 194, lines 2-17*) (*emphasis added*).

Requiring Illinois Power Company to accept Complainant's irrevocable letter of credit is consistent with the Code, consistent with Illinois Power Company's own employee's testimony, consistent with Illinois Power Company's own Rules Regulations and Conditions Applying to Electric Service, and consistent with Illinois Power Company's acceptance of other letters of credit. Denying Complainant's requested relief would allow Illinois Power Company's subjective and contradictory reasoning to supplant a clear and concise reading of the Code.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John McCracken", with a long horizontal flourish extending to the right.

John McCracken
Attorney for Complainant Shaw

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